

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 635 of 1976

For Approval and Signature:

HON'BLE MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
 2. To be referred to the Reporter or not? : NO
 3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
 5. Whether it is to be circulated to the concerned Magistrate/Magistrates, Judge/Judges, Tribunal/Tribunals? : NO

THE SP.LAND ACQUISITION OFFICER

Versus

PATEL DHARAMSHI GILA

Appearance:

1. First Appeal No. 635 of 1976
Mr. KL Pandya, AGP for Petitioner No. 1
MR PM RAVAL for Respondent No. 1-2/D
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CORAM : HON'BLE MR.JUSTICE H.K.RATHOD

Date of decision: 07/10/2003

ORAL JUDGEMENT

Heard learned Asstt. GP Mr. K.L. Pandya for the
appellant and Mr. P.M. Raval, learned advocate for the

respondents original claimants. The appellant has removed all the office objections raised by the office and now, the request has been made by the learned AGP Mr. Pandya appearing for the appellant to fix the matter for final hearing. It was his submission that this being the matter of 1976, it is a very old matter and since the office objections have been removed, the matter may be fixed for final hearing for disposal thereof. Considering his request and with the consent of the learned advocates for both the sides, the matter has been taken up for final hearing today itself. Initially, this matter was dismissed for default but subsequently by order dated 18.8.2003, it was restored.

2. In this appeal, the appellant Special Land Acquisition Officer has challenged the judgment and order of the Assistant Judge at Bhavnagar in Land Reference Case No. 16 of 1972 dated 18th September, 1975 whereby the Reference Court has allowed the reference in part and the claimants were awarded the excess amount of Rs.15,459.90 ps. plus Rs.2,,319.15 towards solatium at the rate of 15 per cent and in all Rs.17,778.90 as excess compensation for acquired land inclusive of solatium amount at the rate of 15 per cent and has disallowed the rest of the claim of the claimants and has directed the appellant to pay the said amount with costs and interest at the rate of 4 per cent on the excess amount from the date of possession of the lands under acquisition till the date of payment of such excess amount into the Court. As per the said order, the appellant was also directed to deposit the said amount in the Court within two months from the date of the said order and has also directed that the amount of Rs.1,249.00 out of the court fees paid by the claimants on the said reference be refunded to the claimants. Accordingly the award was drawn by the reference court as per the said judgment.

3. Brief facts of the present appeal are to the effect that the aforesaid reference was made by the Land Acquisition Officer (Deputy Collector), Bhavnagar under section 18 of the Land Acquisition Act at the instance of the original claimants for enhancement of the award as the original claimants were not satisfied with the award made by the land acquisition officer.

4. The proceedings being LAQ Case No. 11 of 1970 for acquisition of certain lands including the acquired land of the said proceedings situated in village Ruva of Bhavnagar Taluka of Bhavnagar District were started by the Government of Gujarat at the request of the Executive Engineer, Rajkot Central Division, C Public Works

Department, Rajkot for constructing V.O.R. Building at the Civil Aerodrome, Bhavnagar. Notification dated 1st February, 1971 was published in the Government of Gujarat Gazette and the notification under section 6 of the Act dated 10th May, 1971 was also published in the Government Gazette. A public notice under sections 4 and 9 of the Act were issued, published and served upon the parties concerned and after hearing the parties, the learned land acquisition officer passed an award for the claimants' land on 6th December, 1971. Out of the present claimants' survey no. 65/1 ad measuring H.1-..98 square meters 13=4 acres 36 gunthas = 23, 7816 square yards has been acquired in the above proceedings and the land acquisition officer has awarded an amount of Rs.6,767.20 ps. including the solatium in favour of the claimants which includes the amount of Rs.5885.50 ps. towards the land calculated at the rate of Rs.2970.00 per hectare and Rs.882.70 ps. towards solatium at the rate of 15 per cent. As the original claimants were not satisfied with the said award made by the land acquisition officer, the land acquisition officer made reference before the reference court under section 18 of the Act, at the instance of the original claimants, as stated above.

5. Before the reference court, it was contended by the original claimants that the award made by the land acquisition officer is not just and proper and that the land acquisition officer has erred in awarding an amount of Rs.2970.00 per hectare only; he has not correctly rightly and properly appreciated the market value of the lands in question and has also erred in determining the potential value of the lands in question. It has also been contended that the compensation awarded by him of Rs.6767.20 for the land ad measuring 1 H. 98 Are 13 square meters is grossly inadequate and the award amount of Rs.2970.00 per hectare is inadequate. It has also been contended that the award of the land acquisition officer is not based upon the sale instances of the similar lands in the vicinity and the land acquisition officer has not taken into consideration the fertility of the acquired land. It was the prayer made by the original claimants before the reference court that the additional amount of Rs.49795.30 (Rs.46882.80 ps. towards acquired land and Rs. 2912.50 towards severance) including the amount of Rs.10000.00 per acre be awarded towards solatium.

6. The claim of the original claimants was resisted by the Land Acquisition Officer, Bhavnagar by filing objections at Exh. 6 contending inter alia that the statements and the allegations contained in the

application for claiming higher amount are not admitted and that the claimants are not entitled under law to any more amount as and by way of compensation than what is awarded; that the claimants had, without sufficient cause, committed to make claim before the awarding officer and, therefore, their claim for more compensation is liable to be dismissed under section 25(2) of the Act. According to him, the claim is simply exaggerated.

7. Three issues were framed by the reference court at Exh. 7 on the basis of the pleadings of the parties as under:

- (1) Whether the amount awarded is inadequate ?
- (2) If yes, what further compensation should be awarded?
- (3) Is the claim barred under section 25(2) of the Act?
- (4) What order?

8. After appreciating the evidence on record and considering the submissions made by the learned advocates for the parties, the reference court held that the compensation awarded was inadequate and it, therefore, awarded the additional compensation as per final order and issue no.3 was answered by it in the negative. Before the reference court, the claimants have examined claimant no.2 Tulsibhai Bhavanbhai at Exh. 9; Shri SS Shukla at Exh. 13; Gajanan S. Raval at Exh. 15; claimant witness no.4 Sevasdas Navaram at Exh. 19; claimant witness no.5 Shamji Lalji at Exh. 21; claimant witness Vala Ramsang at Exh. 24 whereas the opponent before the reference court examined witness no.1 Rameshchandra Vyankatrav at Exh. 29. At page 6 of the award, the reference court has considered and given complete picture of comparative statements wherein the reference court has considered evidence of each witnesses and the land in question. The reference court has also considered the sale instances and has ultimately come to the conclusion that some of the sale instances are not comparable and some are comparable and after considering these aspects, ultimately, at page 19, the reference court has come to the conclusion that the land in question no direct access from any existing land and is jirayat land and does not warrant any non agriculture potentiality; said lands are at the distance of two and half km from the main city of Bhavnagar and near to the Aerodrome and, therefore, the land in question is more beneficial for agricultural purposes and in the vicinity of the acquired land, there are agricultural lands as deposed by the witness Gajanan S. Raval. Ultimately,

the reference court has considered the potentiality of agricultural activities and utilities and its proximity to the city of Bhavnagar and after considering all these aspects, the reference court answered issue no.1 in the affirmative and held that the compensation awarded by the land acquisition officer was inadequate.

9. Thereafter, issues no.2 and 3 were examined by the reference court. While considering issue no.2, the reference court has considered the sale instances cited by the witness Gajanan Samaldas Raval. According to the said agreement for sale, it was agreed to sell the agricultural land at the rate of Rs.10,000.00 per acre i.e. Rs.2.08 ps. per square yard and has observed that on the basis of the said agreements for sale mentioned in the sale instances Exh. 16, 17 and 18, claimants must be awarded the compensation. It was however observed by the reference court that the lands under acquisition are about one and half km away from the lands covered by the sale instances. It has also been observed that the acquired lands are situated beyond the municipal limits while the lands under the sale instances are within the municipal limits having very high NA Potentialities while the lands under acquisition are not having such NA Potentialities. The reference court has, however, observed that the compensation cannot be awarded at par with the rate of the price per acre of the said agreements for sale of those sale instances but it must be taken into consideration that the villages Ruva and Tarasmiya are in the vicinity of Bhavnagar City and they have become practically the suburbs of Bhavnagar. The reference court has also observed that the produce of the acquired land and other agricultural lands in the vicinity will have its market in the city of Bhavnagar and the agricultural produce will be required to be brought to the market of Bhavnagar. In view of that, it has been observed by the reference court that under these circumstances, the market value of the acquired land must be fixed at Rs.0.90 ps. per sq. yard and thus, the claimants will be entitled to the amount of Rs.21,344.40 ps. for the acquired land and has thereafter deducted the amount awarded by the land acquisition officer i.e. Rs.5884.50 and has held that the claimants will, thus, be entitled to the enhanced compensation of Rs.15,459.90 ps. and they will also be entitled to Rs.2,319.00 by way of solatium on this amount, and the claimants were thus held to be entitled to Rs.17,778.90 ps. by way of enhanced compensation inclusive of solatium for the acquired land and has negatived the claim of the claimants for the compensation of Rs.2912.50 towards severance of the land and has answered issue no.2 accordingly.

10. Then the reference court examined issue no.3 and observed that there is no evidence on the said issue and has held that it cannot be said that the claim of the claimants is barred as per section 25(2) of the Act and has, therefore, answered the said issue in the negative and has awarded the additional amount of compensation as stated above which is under challenge in this appeal.

11. I have perused the pleadings of the parties as well as the award of the land acquisition officer; award of the reference court and the original record. I have also considered the reasoning given by the reference court. As per my opinion, the reference court was right in discussing the issues and reasons in support of its conclusions. The reference court was also right in appreciating various sale instances and the sale instances cited by the witness Gajanand S Raval who has given instance of sale at Rs.10000.00 per hectare which comes to Rs.2.08 per square yard while relying upon Exh. 16, 17 and 18. I am of the opinion that the reference court was right in awarding enhanced compensation of Rs.21,344.40 ps. in favour of the original claimants and in doing so, no error in law or on facts has been committed by the reference court. Therefore, there is no error committed by the reference court while passing the award in question. The reference court was right in appreciating the sale instances which are in respect of the similar land near to the land in question. Therefore, according to my opinion, there is no error committed by the reference court and, therefore, there is no reason to disturb the findings given by the reference court after appreciating the evidence on record and the sale instances.

12. It is also required to be noted that the sale instance referred by the witness Gajanand S. Raval has not been fully followed and applied by the reference court on that basis, the reference court has decided the figure which is just and reasonable figure in light of the sale instances and, therefore, I am of the opinion that there is no substance in this appeal. Learned AGP Mr. Pandya appearing for the appellant has not been able to point out any jurisdictional error committed by the reference court. He has also not been able to point out that the findings given by the reference court and the conclusions drawn by the reference court are contrary to the facts on record. He has also not been able to point out that such findings are perverse and, therefore, I am of the view that the award made by the reference court is quite just, proper and well reasoned award requiring no

interference of this court in this appeal and, therefore, this appeal is required to be dismissed.

In the result, for the aforesaid reasons, this appeal is dismissed. Interim relief, if any, shall stand vacated. There shall be no order as to costs.

Dt.7.10.2003. (H.K. Rathod,J.)

Vyas